



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/526,274

10/03/2005

John Alan Eggleiden

118771.00103

8494

27557

7590

08/13/2007

BLANK ROME LLP

600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20037

EXAMINER

LE, HUYEN D

ART UNIT

PAPER NUMBER .

3751

MAIL DATE

DELIVERY MODE

08/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ED

Office Action Summary	Application No. 10/526,274	Applicant(s) EGGLEDEN, JOHN ALAN	
	Examiner Huyen Le	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8 is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1- 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gebhard (5,186,563).

The Gebhard reference discloses a fluid dispenser comprising a bellows 42, an upstanding open-ended neck portion 45 with external threads, the bellows having a plurality of vertically spaced ring-shaped outer fold-lines, a plurality of vertically spaced inner ring-shaped fold-lines of smaller diameter than that of the outer fold-lines and each positioned at a height generally midway between each pair of outer fold-lines; and annular webs extending between neighboring inner and outer fold-lines.

Although Gebhard does not disclose the dispenser extruded from a low density polyethylene material, the mean thickness of the webs between 0.4 to 1.5 mm, the height of the dispenser between 55 and 85 mm, the weight of the dispenser between 10 and 17.5 grams, the mean thickness of the outer fold-lines and the inner fold-lines, and the ratio of the thicknesses of the inner and outer fold-lines, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select a mean thickness, height, weight, and ratio of thicknesses within a certain range to best fit a particular dispenser design and to optimize the performance. See *In re Aller*, 105

USPQ 233, using the optimum or workable ranges involves only routine skill in the art. Regarding the material made of the dispenser, selecting a known material on the basis of its suitability for the intended use would be a mere matter of obvious design choice.

Regarding claim 6, the upper open end of the neck 45 is closed by a cap 12 with internal threads.

Regarding claim 7, the tube 20 is provided within the cap 12.

3. Claims 1-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorber (3,357,395).

The Lorber reference discloses a fluid dispenser comprising a bellows 1, a neck 2 closed by a cap 3 on which is mounted an absorbent pad 7 formed with a dome shaped outer surface, the cap including an aperture 6 through which fluid can flow to the pad 7 when the bellows 1 is depressed, the bellows 1 having a plurality of vertically spaced ring-shaped outer fold-lines, a plurality of vertically spaced inner ring-shaped fold-lines of smaller diameter than that of the outer fold-lines and each positioned at a height generally midway between each pair of outer fold-lines; and annular webs extending between neighboring inner and outer fold-lines.

Although Lorber does not disclose the dispenser extruded from a low density polyethylene material, the mean thickness of the webs between 0.4 to 1.5 mm, the height of the dispenser between 55 and 85 mm, the weight of the dispenser between 10 and 17.5 grams, the mean thickness of the outer fold-lines and the inner fold-lines, and the ratio of the thicknesses of the inner and outer fold-lines, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select a mean

thickness, height, weight, and ratio of thicknesses within a certain range to best fit a particular dispenser design and to optimize the performance. See *In re Aller*, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art. Regarding the material made of the dispenser, selecting a known material on the basis of its suitability for the intended use would be a mere matter of obvious design choice.

Response to Arguments

4. Applicant's arguments filed 05/22/2007 have been fully considered but they are not persuasive. Regarding applicant's arguments that's Gebhard does not disclose or suggest all claimed features and the Office action has failed to provide a prima facie case of obvious, examiner disagrees with applicant. Gebhard discloses all claimed features except the thickness of the web of the bellows, the height of the dispenser and the weight of the dispenser. The optimum thickness, the height and weight of the dispenser have no patentable weight. The optimization of these dimensions would have been an obvious design choice to one of ordinary skill in the art.

Allowable Subject Matter

5. Claim 8 is allowed.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Huyen Le
Primary Examiner
Art Unit 3751